

BOARD OF ZONING APPEALS
November 4, 2010

Mr. Wenger called the meeting to order at 7:00 p.m.

A. Roll Call

Present:

Mr. Mark Wenger
Ms. Barbara Moody
Mr. William Watkins
Mr. Marvin Rhodes
Mr. David Otey

Others Present:

Ms. Melissa Brown, Zoning Administrator
Mr. Brian Elmore, Dev. Mgt. Assistant
Mr. Adam Kinsman, Deputy County Attorney

B. Minutes – April 1, 2010

Ms. Brown stated the minutes would be ready for review by the next Board of Zoning Appeals (BZA) meeting.

C. Old Business

There was no old business.

D. New Business

ZA-0002-2010 Appeal to Zoning Administrator's Interpretation of Chisel Run Proffers

Ms. Brown stated the County Attorney's office had requested a special meeting format.

Mr. Otey stated he may have a potential conflict of interest. He stated the original applicant for the rezoning was Sam Powell, his law partner at the time. There was no involvement or financial interest with the case.

Mr. Rhodes moved for adoption of the special meeting format, with a second from Ms. Moody.

In a unanimous voice vote, the special format was adopted (5-0).

Mr. Vernon Geddy, representing Busch Development Corporation, stated that regarding whether the appeal was within the jurisdiction of the BZA or the Board of Supervisors, proffer-interpretation appeals are heard by the Board of Supervisors. The appeal is not a proffer interpretation since the proffer is clear. The meaning of the language of the rezoning resolution adopted by the Board of Supervisors is in question. The resolution states "... Board of Supervisors of James City County does hereby approve zoning case Z-0010-1983 as described herein and as detailed by the attached memorandum and accepts the voluntary proffer signed by the property owner." The proffer states a 239-unit cap on land inside and outside of the rezoned area.

Mr. Kinsman stated the BZA is limited to certain powers, including granting variances and hearing appeals to Zoning Administrator decisions. The Zoning Administrator is also limited to making determinations under the Zoning Ordinance and to interpreting proffers. Appeals to the Zoning Administrator's interpretation of proffers are heard by the Board of Supervisors, since the Board originally approved those proffers. The Zoning Administrator cannot interpret a proffer without reviewing all other case and resolution materials. A determination cannot be made against a resolution and the corresponding proffers separately. The proper avenue for the applicant's appeal is through the Board of Supervisors. The BZA should decline jurisdiction over the appeal.

Ms. Brown stated that if an applicant wants to appeal to the BZA, staff must forward that application.

Mr. Watkins stated that based on his training and experience, he agrees with Mr. Kinsman's argument that the BZA does not have the authority to hear the appeal. He stated that the General Assembly grants the BZA clear authority, and without that, the matter should be deferred to the Board.

Mr. Moody stated her thinking was similar to Mr. Watkins. She stated she could not make a decision on the matter.

Mr. Rhodes stated he did not see the BZA having jurisdiction over the case.

Mr. Watkins moved to waiver jurisdiction and refer the matter to the Board, with a second from Ms. Moody.

In a unanimous roll call vote, the BZA deferred the matter to the Board in accordance with Section 24-19, Petition for review of decisions, of the zoning ordinance(5-0).

Mr. Wenger opened the public hearing.

Ms. Diane Reyes, 5401 Sasha Court, stated she was concerned with tree loss from the additional lots in Chisel Run. She asked if there was a site plan available for review.

Ms. Brown stated no site plan had been submitted yet with the appeal.

Ms. Jeaneete Novio, 5312 Nicholas Court, stated she was concerned with tree and wildlife loss from the Chisel Run application.

Mr. Wenger closed the public hearing.

E. Matters of Special Privilege

There were no matters of special privilege.

F. Adjournment

Mr. Watkins moved for adjournment, with a second from Ms. Moody.

The meeting was adjourned at 7:25p.m.

Mark Wenger
Chairman

Melissa C. Brown
Secretary